In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-12

LIBERTY MUTUAL INSURANCE COMPANY, PETITIONER

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR RESPONDENT IN OPPOSITION

The judgment in this case was entered on March 27, 1973 (App., *infra*).[1] No extension of time for filing the petition for a writ of certiorari was obtained, and the petition was filed on June 26, 1973, 91 days after the entry of judgment. The petition therefore was not timely filed within the 90-day jurisdictional time provided in 28 U.S.C. 2101(c).[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

AUGUST 1973.

[1] The clerk of the court of appeals has informed us that the judgment was entered on that date, and that it was subsequently stamped by the district court clerk's office "Filed in [District Court] Clerk's Office April 19, 1973."

[2] The 90 day period runs from the entry of judgment, rather than the issuance of the mandate. *Boylan* v. *United States*, 257 U.S. 614.

APPENDIX

In the United States Court of Appeals for the Fifth Circuit

OCTOBER TERM, 1972

No. 72-2834

D. C. Docket No. CA-16590

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
PLAINTIFF-APPELLEE

v.

LIBERTY MUTUAL INSURANCE COMPANY,
DEFENDANT-APPELLANT

Appeal From the United States District Court for the Northern District of Georgia.

Before WISDOM, GEWIN and COLEMAN, *Circuit Judges.*

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Georgia, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed; and that this cause be, and the same is hereby remanded to the said District Court in accordance with the opinion of this Court.

It is further ordered that defendant-appellant pay to plaintiff-appellee, the costs on appeal to be taxed by the Clerk of this Court.

March 27, 1973

A true copy:

Test: EDWARD W. WADSWORTH

Clerk of the United States Court of Appeals for the Fifth Circuit.

BY MARYETTE K. FARLEY
Deputy

New Orleans, Louisiana

Issued as Mandate: April 18, 1973

DOJ-1973-08